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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/920,337	07/31/2001	Roger A. Stern	019519-000310US	4149
20350	7590	07/26/2005	EXAMINER	
TOWNSEND AND TOWNSEND AND CREW, LLP TWO EMBARCADERO CENTER EIGHTH FLOOR SAN FRANCISCO, CA 94111-3834			EISEN, ALEXANDER	
			ART UNIT	PAPER NUMBER
			2674	

DATE MAILED: 07/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/920,337

Applicant(s)

STERN ET AL.

Examiner

Alexander Eisen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14,33 and 38-46 is/are pending in the application.
- 4a) Of the above claim(s) 45 and 46 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 33 and 41 is/are allowed.
- 6) ☒ Claim(s) 1-6,8-14,38 and 42-44 is/are rejected.
- 7) ☒ Claim(s) 7,39 and 40 is/are objected to.
- 8) ☒ Claim(s) 45 and 46 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Newly submitted claims 45 and 46 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: independent claim 45 claims a “mechanical apparatus... capable of moving a display”, which is not required by originally presented claims and therefore constitutes a separate invention.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 45-46 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 3-5, 8, 10-14, 38 and 42-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fateh et al., (Fateh), US 6,076,928, reference of record.

With respect to claim 1 Fateh discloses a computer system 100 (FIGS. 11-12) for monitoring the use of a display by a user and having a display (102) performing a task; a first sensor 104 positioned relative to the display and selected from a group consisting of a distance sensor 350 and a light sensors 350 and 106-112 (can be holograms or gratings); and a means for

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automatically notifying a user when a user is not at a proper viewing distance (see col. 5, lines 6-12; FIG. 12; col. 7, ll. 10-20).

While Fateh does not explicitly disclose that the means for notifying user comprises switching the display to a screensaver type, Fateh does disclose that the means for notifying a user switches the display in a mode whereby an ergonomic software window displays a viewer distance 372 and a recommended viewer distance 374 (FIG. 12), the messages, which according to the Applicant can be considered as a screensaver (specification; page 4, ll. 25-29).

As to claim 3 the display in Fateh is one of CRT, LCD and a flat panel.

As to claims 4 and 11, the sensor is incorporated into a supporting structure of the display and placed on the top of the display.

As to claim 5, the system further comprises at least three light sensors to determine a source of multi-directional light relative to a user (col. 3, ll. 53-64).

As to claim 8, the system comprises a computer for processing inputs from the sensor (col. 7, lines 7-20).

As to claim 10, the sensor is positioned to monitor the display depending on the display distance from the user (col. 7, ll. 20-34, for instance).

As to claim 12, Fateh shows a keyboard (FIG. 5a, for example), which is a remote input device. Also Fateh teaches a setting button 382, which can be used by a user for requesting a measurement.

As to claim 13, the sensor is a distance sensor (col. 7, lines 2-7).

As to claim 14, the sensor can be a light sensor (e.g. infrared).

As to claim 38 the switching comprises a switching algorithm (col. 7, ll. 10-20).

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Claims 42-43 are method claims relevant to apparatus claim 1 and would be rejected on the same grounds.

4. Claims 2 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fateh in view of Richardson (both references are of record).

With regards to claims 2 and 9 Fateh discloses a computer system for monitoring the use of a display by a user and having a display 102 performing a task; a first sensor 104 positioned relative to the display and selected from a group consisting of a distance sensor 350 and a light sensors 350 and 106-112; and a means for automatically notifying a user when a user is not at a proper viewing distance.

Fateh does not disclose, however, a communication link between the system and a computer system accessible by hypertext protocol, or that the sensor is connected to the system through a cable.

Richardson teaches a computer system having light sensors for controlling a computer (FIG. 2), wherein the system is connected to the Internet (col. 4, lines 18-31), the imaging sensors (112 and 122) housed in a headset (70) is connected to the computer through a cable (62); and the system is capable of monitoring blink rate (FIG. 18; col. 4, lines 38-46).

Connecting computers for variety of tasks to the Internet is well known in the art, and it would have been obvious to one of ordinary skill in the art at the time when the invention was made to improve the system of Fateh by the teachings of Richardson, i.e. by adding the ability to be connected to the Internet, because it would enhance the computer abilities while being within the common knowledge without bringing about any unexpected result, since most known computer systems are connected to the Internet anyway.

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5. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fateh in view of Kochanski, US 5,854,661.

Fateh does not disclose that the first sensor includes an incorporated camera or an incorporated image sensor.

Kochanski teaches a display system having a camera mounted on the display, which is used, among other things, to measure a distance between the display and light source or a user.

It would have been obvious to one of ordinary skill in the art at the time when the invention was made that using suggested by Kochanski a camera as a light sensor in Fateh would be beneficial to the latter, because besides the measuring a distance it would allow to eliminate undesirable reflection images (col. 2, ll. 12-32; FIGS. 2-3).

6. Claim 44 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fateh et al., ("Fateh"), US 6,076,928 in view of Jeon, US 5,877,841 (both are references of record).

Fateh discloses a method for determining a recommended viewing distance for a user viewing display comprising displaying a suggestion regarding recommended viewing distance (FIG. 12; col. 7, lines 7-15).

It is noted that Fateh does not disclose that the displaying of recommended viewing distance is based on query and response to the query.

Jeon teaches an eye examination system presenting test patterns and based on interaction between a user and system, such as query, which is responded to by the user, and measured distance between the user and a display (FIG. 8A-H; column 3, line 44 - column 50).

It would have been obvious to one of ordinary skill in the art at the time when the invention was made to provide Fateh with the test ability of Jeon, because it would allow Fateh

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to display recommended distance for viewing a display, by optimizing this distance value based on the test performed by Jeon, wherein a user's perception is measured based on the distance, i.e. to include the user's vision acuity as a factor into a recommendation.

Allowable Subject Matter

7. Claims 7, 39 and 40 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The reasons for the indication of allowable subject matter in claim 7 have been conveyed to the Applicant in the previous official action. As per claims 39 and 40, none of the prior art, either singly or in combination, teach or suggest that the switching algorithm in the system as claimed ignores momentary infrequent violations of distance limits, or that the normal use of the system is suspended until user returns to a proper viewing distance.

8. Claims 33 and 41 are allowed. The reasons for allowance are delegated in the previous official action.

Response to Arguments

9. Applicant's arguments have been fully considered but are not persuasive and also are moot in view of the new ground(s) of rejection. Applicant argues that none of the prior art describes that the notifying a user comprises switching the display to a screensaver type. By Applicant's own definition: "The type of screensaver may be selected by the user and, for example, may consist of a message indicating that the user is too close or the image may consist of a relaxing image that is pleasant to view. In any event, normal use of the computer is suspended until the user returns to the proper viewing distance or until sometime when it expires". The examiner asserts that Fateh teaches displaying messages 372 and 374 on the

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display in response to a user distance from the display, which constitute, in that sense, screensaver type of the display as defined by the Applicant, since no specifics of what is a screensaver type is given by the Applicant, except of those above.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexander Eisen whose telephone number is (571) 272-7687. The examiner can normally be reached on M-F (9:00-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Edouard can be reached on (571) 272-7603. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Alexander Eisen', with a stylized, cursive script.

Alexander Eisen
Primary Examiner
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22 July 2005